IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 68 OF 2005

BASF India Ltd. ...Applicants

Versus

Pawan Kumar ...Respondent

Mr. Birendra B. Saraf, instructed by M/s. Negandhi, Shah & Himayatullah, for the applicants.

CORAM: **DALVEER BHANDARI, C.J.**
DATE: AUGUST 18, 2005.

P.C.

In this application, notice was issued on 20th July, 2005, returnable on 12th August, 2005.

2. The learned counsel for the applicants submits that the applicants have made four attempts to serve the respondent. Mr. Rabi Shankar Dash, Advocate, under instructions from the applicants, has filed his affidavit in which he has mentioned that he had gone to Gurgaon on 10th August, 2005 to effect service of the summons on the respondent at Villa No.CC-14, Coral Court Essel Towers, Gurgaon, Haryana. Since the said house was locked, he had gone to Jalandhar to serve the summons on the respondent at his shop premises at

Jalandhar on 11th August, 2005. After reaching Jalandhar, he met respondent's brother Mr. Yash Pal and served the summons to him. There is an endorsement of Mr. Yash Pal acknowledging receipt of the summons.

3. The learned counsel for the applicants submits that thereafter three attempts were made to serve the respondent. The summons sent through courier indicates that on 16th August, 2005, delivery was accepted by one Ram Chander. Prior to this, the summons sent to him was received back unclaimed on 18th June, 2005.

4. The learned counsel for the applicants submits that the applicants have taken all steps to serve the respondent. Even then, the respondent has chosen not to appear. The learned counsel has drawn my attention to clause 28 of the agreement entered into between the applicants and the respondent, which reads as under:

> "28. This Agreement shall be deemed to be an Agreement made in Mumbai and any dispute at any time arising between the parties hereto as to the construction, meaning or effect hereof of any clause, matter orthing herein contained or the rights and liabilities hereunder the same shall be referred to the Arbitration by the Sole

> Arbitrator who shall be Chief Executive – Leather & Textile Chemicals Division of the Company in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modifications or reenactment thereof for the time being in force and all proceedings in such arbitration shall be held in Mumbai and not elsewhere and the award passed in such Arbitration shall be final and binding on the parties and courts in Mumbai alone have exclusive jurisdiction to try matters connected therewith."

According to the above agreement, the matter needs to be referred to the sole arbitrator of Chief Executive- Leather & Textile Chemicals Division of the Company. The learned counsel submits that in order to show the fairness, the applicants would accept the arbitration of a retired Judge of this Court.

5. In view of the above, I request Mr. Justice S.K. Desai, a former Judge of this Court, to accept this arbitration. He would be at liberty to fix his own fees. This application is accordingly disposed of.

CHIEF JUSTICE